

UK Legal News Analysis

## Extended warranties and price comparison sites

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**Abstract**

**Commercial analysis:** The Competition Appeal Tribunal recently considered the issue of a price comparison site for extended warranties. Adam Powell, commercial law partner of London city firm, Silverman Sherliker, discusses the likely implications of the decision.

**Analysis**

**Original news**

John Lewis loses battle against warranties website, LNB News 30/03/2013 1

*The Times, 30 March 2013: The Competition Appeal Tribunal (OFT) has rejected a legal challenge by John Lewis against a proposed consumer website that compares prices of extended warranties. The OFT said the website would not list warranties bundled in with the price of the item, which is how John Lewis' warranties are set up. However, the tribunal said the retailer was too late in bringing its objections; therefore they would not be considered. The website can now go ahead.*

Details of the Competition Appeal Tribunal decision can be found here: *John Lewis plc v Office of Fair Trading*, LNB News 02/04/2013 34

**What led to the OFT investigation into extended warranties?**

In 1998, and following an investigation and report from the Monopolies and Mergers Commission (now the Competition Commission), in relation to practices by suppliers and dealers of domestic electrical goods, the Restriction on Agreements and Conduct (Specified Domestic Electrical Goods) Order 1998, SI 1998/1271 (the Order) was made. The Order aimed at increasing competition in that market by, among other things, prohibiting manufacturers from recommending retail prices and from refusing to supply other than as allowed in the Order.

As a result of this report, a review into extended warranties was carried out in 2002 by the Competition Commission. The conclusion was that there appeared to be a complex monopoly operating in the extended

warranties market which was, of course, against public interest. The Commission recommended a solution designed to ensure that consumers know the price of the extended warranty at the time they buy, are given time to compare extended warranties and have the opportunity to switch.

The OFT then carried out a study into extended warranties for domestic electrical goods in 2011 to review whether competition for these warranties is sufficient to enable consumers to get value in a market worth over £750 million, and where extended warranties can add around 50% to the price of the goods.

The reasons the OFT carried out this study included:

- o despite an increase in providers of extended warranties, there remained competition concerns--retailers offering extended warranties at point of sale effectively made it difficult for other providers to compete
- o concerns were raised that extended warranties do not represent value for money
- o despite pricing extended warranties remaining relatively static, prices had not declined significantly since the Order came into force which indicated lack of competition--the Commission had previously concluded that extended warranty prices may be reduced by a third if the market was more competitive

The study identified that there was still a lack of competition and retailer advantage which fundamentally related to retailers' selling extended warranties contemporaneously to selling the goods.

#### **How should companies approach extended warranties on their products to avoid problems?**

Companies will need to comply with the Supply of Extended Warranties on Domestic Electrical Goods Order 2005, SI 2005/37 if selling extended warranties on domestic electrical goods.

Companies must be transparent with consumers. They must state, clearly and legibly, the price and duration of one applicable warranty next to the price of the goods or range of goods. In stores, companies must also make clear that the purchase of an extended warranty is optional.

In addition, companies must prominently state:

- o the consumers' statutory rights
- o that extended warranties can be obtained elsewhere
- o that household insurance may be relevant to the purchase of a electrical goods
- o that an extended warranty does not have to be purchased at the same time as the goods
- o details of any cancellation and termination rights
- o the financial protection consumers have if the provider of the extended warranty goes out of business
- o whether or not the extended warranty will come to an end if a claim is made

The OFT has published guidance on providing extended warranties in relation to avoiding problems and advertising and retailers are advised to take full advice in this regard.

#### **What were John Lewis' concerns about the comparison website?**

John Lewis' application to the Competition Appeal Tribunal (CAT) was to seek review of the OFT's decision not to list certain of its extended warranties on a comparison website following the implementation by the OFT of undertakings from retailers in lieu of referring the issue to the Commission.

John Lewis stated that it actively participated in the OFT's consultation on the undertakings in lieu and the OFT's development of the comparison website, and it raised concerns that 'bundled' extended warranties offered by providers such as John Lewis may not be listed on the website. This will mean that the comparison website may not include bundled extended warranties offered by John Lewis or other providers.

John Lewis claims that:

o the website will mislead customers and distort free trade

o the OFT has unreasonably and unlawfully exercised its discretion under the Enterprise Act 2002, s 154 by rejecting a proposal that provides more relevant information to the consumer and deliberately excludes extended warranty providers that structure their product in a particular way

o the OFT's refusal to list John Lewis' bundled extended warranties, or refer to the provision of bundled extended warranties, on the website solely on the basis that it does not charge a separate price for the extended warranties is in breach of the undertakings in lieu

**What impact would John Lewis' exclusion from the site have on consumers' best interests?**

Bundled warranties may in fact offer the best price for consumers and therefore by excluding them from the comparison website will not offer a fair comparison for consumers. Conversely, it may also encourage those bundled warranties providers to price their goods and warranties in a different way, which may allow consumers to understand the product and make a more informed decision.

**What are the concerns surrounding comparison sites in general?**

The main concern surrounding comparison websites is that they may in fact mislead consumers as to what is the best deal due to the absence of certain services or goods providers on those sites. Many sites only include providers who subscribe and pay for their listing. The manner in which the information is presented on the sites is also important otherwise further distortions may occur.

**What are your predictions for the future of comparison sites?**

Comparison sites will most likely continue to increase in popularity due to increased usage of the internet. This will undoubtedly bring a need for more regulation and monitoring by independent bodies such as the OFT in order to ensure that the public's best interest is maintained.

*Interview by Diana Bentley.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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